

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:     Eatherly Construction Co.                                 )  
              Personal Property Account #093699                    ) Davidson County  
              Tax Year 2005   )

INITIAL DECISION AND ORDER

Statement of the Case

An appeal has been filed on February 28, 2006, on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A jurisdictional hearing was conducted on April 13, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were Steve Eatherly, the appellant, who was represented by Angus Gillis, III, Esq., Mr. Robert Eatherly, and Mr. Allen Morgan from the Davidson County Property Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of various office and construction equipment located at 1000 Lebanon Road in Nashville, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(b)(2) & 67-5-1412(e). Nevertheless, the legislature has also provided that:

The taxpayer shall have **a right to a hearing and determination to show reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1<sup>st</sup> of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412(e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the**



**taxpayer's control.** (*emphasis added.*) *Associated Pipeline Contractors Inc.* (Williamson County, Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction to this appeal, the taxpayers must show that circumstances beyond their control prevented them from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief.

The taxpayer, through his counsel, stated that he thought his father, who was handling that portion of the business, had taken care of the filing. Mr. Robert Eatherly is 77 years old and suffering from Parkinson's disease, which has begun to affect his memory. After reviewing the documentation there is, sufficient reasonable cause to maintain that incidents beyond the taxpayers control prevented him from filing with the county board.

#### ORDER

The administrative believes that "reasonable cause" does exist and Mr. Steve Eatherly has sustained his burden and, therefore, the State Board of Equalization does have jurisdiction to hear this appeal. A notice of hearing will be sent at a later date.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

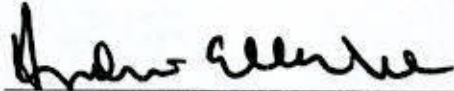
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or



3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28<sup>th</sup> day of April, 2006.



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ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Steve B. Eatherly  
Jo Ann North, Assessor of Property